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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/553,734	10/20/2005	Takayoshi Tanizawa	HOK-0290	7774

74384   7590   03/26/2008
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EXAMINER
DIXON, ANNETTE FREDRICKA

ART UNIT	PAPER NUMBER
3771	

MAIL DATE	DELIVERY MODE
03/26/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
	10/553,734	TANIZAWA ET AL.
Office Action Summary	Examiner	Art Unit	
	Annette F. Dixon	3771	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>26 February 2008</u>.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1,2,5 and 8-12</u> is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1,2,5 and 8-12</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

U.S. Patent and Trademark Office

PTOL-326 (Rev. 08-06) **Office Action Summary** Part of Paper No./Mail Date 20080312

DETAILED ACTION

1.   This Office Action is in response to the after-final amendment filed on February

26, 2008. Examiner acknowledges claims 1, 2, 5, and 8-12 are pending in this

application, with claims 1, 5, and 8 having been currently amended, and claims 3, 4, 6,

and 7 having been cancelled.

2.   The indication of allowable subject matter in claims 4, 5, 8, and 9, as stated in

Office Action, mail date November 27, 2007, has been withdrawn in view of the newly

discovered reference(s) to Kikumoto et al. (2002/0068887). Rejections based on the

newly cited reference(s) follow. Accordingly, the finality of the rejection of the last Office

Action is withdrawn.

Claim Rejections - 35 USC § 102

3.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed
> publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by
> another filed in the United States before the invention by the applicant for patent or (2) a patent
> granted on an application for patent by another filed in the United States before the invention by the
> applicant for patent, except that an international application filed under the treaty defined in section
> 351(a) shall have the effects for purposes of this subsection of an application filed in the United States
> only if the international application designated the United States and was published under Article 21(2)
> of such treaty in the English language.

4.   Claims 1, 2, 5, 8, and 9 are rejected under 35 U.S.C. 102(a) and (e) as being

anticipated by Kikumoto et al. (2002/0068887).

As to Claim 1, Kikumoto discloses an apparatus wherein the recited method is inherent in the use of the apparatus. Kikumoto is an massage machine with a controlling massage program (Figures 7-12 and 15) having a plurality of massage stages with different massage parameters (defined in Figure 15) in a massage machine for providing a massage according to said massage program, said method comprising the steps of storing a change in massage parameter performed in a desired massage stage during an execution of a massage program in memory, and modifying the desired massage stage according to the change in massage parameter stored in said memory at the next execution of said massage program, wherein when a change in total time required for said massage program occurs due to a change in massage parameter in the desired massage stage, the massage parameter of another massage stage corresponding to the massage parameter changed in the desired massage parameter is changed such that said massage program is completed within a predetermined time, and wherein said memory comprises a memory table for storing a required number of massage stages having a same massage parameter, and when the desired massage stage stored at a predetermined position in said memory table is deleted from said memory table, and the massage parameter of said another massage stage is deleted from said memory table is changed such that said massage program is completed within a predetermined time period. (Figure 15 and Paragraphs 0066 thru 0074).

As to Claim 2, Kikumoto discloses the massage machine is a chair-type massage machine (Figures 1 and 2) having a back rest portion (13), in which a massage head for providing a massage action is incorporated (21), and said massage parameters

comprises the kind of massage action, range of massage action, the number of massage actions, massage strength, and massage speed. (Paragraphs 0068-0070).

As to Claim 5, Kikumoto discloses the required number of massage stages having the same massage parameter stored in said memory table (Figure 15, and Paragraphs 0022 and 0066) is a required number of massage stages having a same number of massage actions, and when the desired massage stage is stored in said memory table as a result of the change in the number of massage actions, another massage stage is stored at a predetermined postion in said memory table is deleted from said memory table, and the number of massage actions of said another massage stage deleted from said memory table is changed such that said massage program is completed within a predetermined time period (Paragraph 0070 thru 0074).

As to Claim 8, the difference between Claim 1 and Claim 8 are the following limitations that are also disclosed by Kikumoto. Kikumoto discloses the range of massage action is a combination of ranges of massage action in width and height directions, the plurality of massage stages have at least one of the same massage action in the width direction and a same range of massage action i the height direction, and when a change in massage parameter performed in one of the massage stages is stored in said memory, the massage stages having at least one of the same range of massage action in the width direction and the same range of massage action in the height direction are modified in one lump according to the change in massage parameter stored in said memory at the next execution of said massage. Specifically, Kikumoto discloses a determination of the massage user's body frame (Figure 6),

inherently this measurement of the frame of the user determines the operating ranges of massage action in the width and height directions.

As to Claim 9, Kikumoto discloses the range of massage action is a combination of ranges of massage action in width and height directions, the plurality of massage stages have at least one of the same massage action in the width direction and a same range of massage action i the height direction, and when a change in massage parameter performed in one of the massage stages is stored in said memory, the massage stages having at least one of the same range of massage action in the width direction and the same range of massage action in the height direction are modified in one lump according to the change in massage parameter stored in said memory at the next execution of said massage. Specifically, Kikumoto discloses a determination of the massage user's body frame (Figure 6), inherently this measurement of the frame of the user determines the operating ranges of massage action in the width and height directions.

Claim Rejections - 35 USC § 102/103

5.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

> only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7.   Claims 10-12 are rejected under 35 U.S.C. 102(a/e) as anticipated by or, in the

alternative, under 35 U.S.C. 103(a) as obvious over Kikumoto et al. (2002/0068887) in

view of Cutler et al. (6,375,630).

As to Claims 10 and 12, Kikumoto discloses a memory system (Paragraph 00222

and 0066) wherein permanent software is stored as well as the temporary parameters

of the massage machine user. Inherently, the ability to store permanent software and

the temporary user parameters gives way to the use of ROM, RAM, and their variants.

As known, ROM is read-only memory and is associated with firmware and software

applications, while RAM is random access memory and is associated with temporary

stored memory that may be lost after a power down. Thus, Kikumoto discloses a first

memory for temporary storing a change in massage parameter, and a second memory

for storing the change in massage parameter provided from the first memory after the

completion of said massage program, a control unit (7) configured to control the

massage program according to the method set forth in claim 1, wherein the controller is

detachable to the massage machine, and comprises an input unit (Figure 5) configured

to input the change in massage parameter and a screen (71) for displaying the

massage parameter. However, should Applicant respectfully disagree, Examiner

provides prior art Cutler.   Cutler teaches random-access memory (RAM), read-only memory (ROM), and electrically programmable memory (EEPROM) for controlling the operations of the massage machine and enabling the user to program specific additions to the software program. (Column 2, Lines 1-37 and Column 12, Lines 15-40). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Kikumoto to include different memory types, as taught by Cutler to increase the functionality of the massage machine.

As to Claim 11, Kikumoto discloses the massage machine is a chair-type massage machine (Figures 1 and 2) having a back rest portion (13), in which a massage head for providing a massage action is incorporated (21), and said massage parameters comprises the kind of massage action, range of massage action, the number of massage actions, massage strength, and massage speed. (Paragraphs 0068-0070).

Response to Arguments

8.   Applicant's arguments with respect to claims 1, 2, 5, and 8-12 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hamabe (4,422,449) and Sugai et al. (4,422,448).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette F. Dixon whose telephone number is (571) 272-3392. The examiner can normally be reached on Monday thru Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Examiner
Art Unit 3771

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Examiner, Art Unit 3771

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/Justine R Yu/
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